UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
ATLANTA BRANCH OFFICE

BRIDGESTONE FIRESTONE SOUTH CAROLINA

and **CASE 11–CA–20424**

UNITED STEELWORKERS OF AMERICA, AFL-CIO

Jasper C. Brown, Jr., Esq., for the General Counsel.
Samuel H. Penn, Sr., for the Charging Party.
Kathryn W. Pascover, Esq. and Arnold E. Perl, Esq. for the Respondent.

DECISION

Statement of the Case

LAWRENCE W. CULLEN, Administrative Law Judge. This case was heard before me in Aiken, South Carolina, on January 19, 20, and 21, 2005, pursuant to a complaint issued by the Regional Director of Region 11 of the National Labor Relations Board ("the Board") on October 29, 2004. The complaint, as amended at the hearing, alleges that Respondent Bridgestone Firestone South Carolina ("the Respondent") or ("the Company") violated Sections 8(a)(1) and (3) of the National Labor Relations Act ("the Act"). The complaint is based on a third amended charge filed by the United Steelworkers of America, AFL-CIO, CLC ("the Charging Party" or "the Union"). The complaint is joined by the answer of Respondent filed on the 15th day of November, 2004, as amended at the hearing wherein it denies the commission of any unfair labor practices and asserts certain affirmative defenses. The Respondent also filed a Motion to Dismiss following the presentation of the General Counsel's case.

Upon consideration of the testimony of the witnesses, the exhibits admitted at the hearing and late filed Joint Exhibit 1,[1] which is herein received in the case record evidence,

[1] Late filed Joint Exhibit 1 consists of a July 9, 2004, and a July 15, 2004 taped interview of employee Jeffrey Cockrell.

and the positions of the parties as argued at the hearing and as set out in their post hearing briefs, I make the following:

I. Findings of Fact and Conclusions of Law[2]

A. The Business of the Respondent

The complaint alleges, Respondent admits, and I find, that at all times material herein, Respondent has been a South Carolina corporation, with a plant located at Graniteville, South Carolina, where it is engaged in the manufacture of tire products, that during the past 12 months, a representative period, it sold and shipped from its Graniteville, South Carolina plant, products valued in excess of $50,000 directly to points outside the State of South Carolina and that Respondent has been at all times herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

B. The Labor Organization

The complaint alleges, Respondent admits, and I find, that at all times material herein, the Union has been a labor organization within the meaning of Section 2(5) of the Act.

C. Background

Respondent's Graniteville, South Carolina, plant is a non-union plant. The Union was contacted separately by two employees who indicated that the employees were interested in obtaining union representation at the plant. Employee Jeffrey Cockrell was the second employee to contact the Union. The Union commenced an organizational campaign in late March to early April 2004[3] and the Respondent was notified of the campaign and/or learned of the campaign in late spring 2004. Cockrell became a leading advocate of the Union and spoke to other employees in support of the Union at the plant and informed them of the union meetings. The complaint alleges that Respondent interfered with, restrained, and coerced employees, and is interfering with, restraining, and coercing its employees in the exercise of their Section 7 rights and that Plant Manager Mike Rose created the impression of surveillance of its employees by a June 1, 2004, letter sent to the employees by Rose and, that on or about July 9, 2004, Crew Leader Bob Hamlin, Area IV Group Leader Dovie Majors, Human Resource Generalist Debbie Reed and Human Resources Development Services Leader Steve Sucher interrogated employees regarding their union activities.[4] The complaint also alleges that Respondent, in writing, threatened employees with discharge because they engaged in union activities. The complaint also alleges that on July 15, 2004, Crew Leader Bob Hamlin threatened employees with unspecified reprisals because they engaged in union activities. The complaint further alleges that on July 9, 2004, Respondent issued employee Jeffrey Cockrell a Level III written disciplinary action and that on July 19, 2004, Respondent discharged Jeffrey Cockrell.

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[2] The following includes a composite of the credited testimony and the exhibits received in evidence.

[3] All dates are in 2004 unless otherwise stated.

[4] Paragraph 6(b) alleging unlawful interrogation by Reed and Sucher was withdrawn by the General Counsel at the hearing.

The issues as framed by the complaint are:

1. Whether Respondent violated Section 8(a)(1) of the Act by the acts and conduct as alleged in paragraph 6 of the complaint.

2. Whether Respondent violated Section 8(a)(3) of the Act by its issuance of a Level III written disciplinary warning to employee Jeffrey Cockrell as alleged in paragraph 7 of the complaint.

3. Whether Respondent violated Section 8(a)(3) of the Act by its discharge of employee Jeffrey Cockrell as alleged in paragraph 8 of the complaint.

D. The Section 8(a)(1) Conduct

1. Creating among its employees the impression that their union activities were under surveillance

On June 1, 2004, Plant Manager Michael Rose distributed a letter to all employees stating his opposition to the Union. The letter stated in part "That is why I want to thank the many team members who have chosen to provide information to me regarding the recent attempt by the United Steelworkers to organize our facility." In the letter Rose stated further that he knew he could count on the support of employees in maintaining the plant without the assistance of a union. General Counsel notes that in determining whether a respondent employer has unlawfully created the impression of surveillance, the Board applies the following test: whether employees would reasonably assume from the statement in question that their union activities have been placed under surveillance citing *United Charter Services, Inc.,* 306 NLRB 150 (1992) where the Board found that statements made by an employer to employees that the employer was aware the employees were trying to organize a union, had thereby created the impression of surveillance. General Counsel contends that Respondent's June 1 letter, when taken in the context of its admitted anti-union campaign would indeed cause employees to reasonably assume their activities were under surveillance, as Rose in his letter is simply encouraging employees to continue telling him about the union activities in the plant and is thereby creating the impression of surveillance. I find in agreement with the General Counsel's contentions as set out above that Rose's statement in the June 1 letter thanking employees for providing him with information about the Union unlawfully created the impression of surveillance and violated Section 8(a)(1) of the Act. In making this finding, I recognize the contention by the Respondent that this was no more than a simple "thank you." However, this "thank you" was also followed by a statement that he knew he could count on the support of employees in maintaining the plant without the assistance of a union. I find that it is obvious that Rose was encouraging employees to keep him informed of union activities which would reasonably put the employees on notice that their union activities were being watched or placed under surveillance.

2. The interrogation of Jeffrey Cockrell regarding his union activities

3. The threat issued to Cockrell because of his engagement in union activities

4. The issuance of a Level III written disciplinary warning to Cockrell on July 9

These allegations are considered together since they derive from the same discussions. Employee Jeffrey Cockrell testified that on June 24 shortly before the end of his shift, he went to the break room for his final break period. Several other employees were seated around the break room table. He (Cockrell) initiated a discussion of the union campaign by asking the employees what they thought about the Union. According to Cockrell's unrebutted testimony, employee Robbie Dennis stated that he "did not need a motherfucker to say a god-damn thing for him" as he stood up and walked around the table, made other comments and then walked out of the break room. Dennis quickly returned to the break room, made some additional comments and left the break room again. After this, the employees discussed the merits of having a union in the plant. Everyone in the group voiced their opinion except employee Robbie Rutland. Cockrell spoke in favor of the Union and employee Elwood Parker spoke against the Union and specifically disagreed with some statements that Cockrell made as to how a union presence would work at the plant. Cockrell admitted at the hearing that he used profanity as did several other employees during this discussion. According to Cockrell, no one took offense to his use of profanity because almost all of the employees, with one exception, used profanity during this discussion. Cockrell stated that the discussion in the break room lasted 20 to 25 minutes before the employees returned to work.

Cockrell testified that the following week he was informed by employee Curtis Jennings that he (Jennings) had been contacted by Human Resources Manager Debra Reed about an investigation of the break room discussion. On the morning of July 6, Reed called Cockrell and instructed him to report to the Human Resources Department that morning. He had a prior appointment and called Reed and left his telephone number. Later that day, Human Resources Manager Steve Sucher called him and told him there were allegations made against him regarding his conduct in the break room. He asked Sucher what the allegations were. Sucher did not tell him what the allegations were but told Cockrell he wanted a statement from him. Cockrell prepared a written statement and sent it to Sucher on the same day. The statement reads as follows:

> To Whom It May Concern:
>
> On June 24th at around 5:00 a.m. a group of people were in the break room. A discussion was brought up concerning the union and the pros and cons about a union were discussed.
>
> Jeffrey S. Cockrell

On July 7, Sucher called Cockrell again and told him he had received his statement but it was not sufficient as he wanted to know what Cockrell had said in the break room incident. Cockrell again asked him what the allegations were and Sucher told him he did not have to tell him. He then told Cockrell to rewrite the statement but Cockrell did not agree to do so. Sucher then told Cockrell to come to Human Resources on Friday morning.

On Friday, July 9, Cockrell met with Sucher, Reed, and Department Manager Dovie Majors and Supervisor Bob Hamlin in the conference room of Human Resources. Sucher told Cockrell there had been some serious allegations of inappropriate language and behavior made against him. Sucher again told Cockrell that he had received his statement and that it was not what he was looking for. He then told Cockrell he was going to give him another chance to rewrite his statement. Cockrell stated that what he had said in his prior

statement was the truth. After another request by Cockrell as to what the allegations were, Sucher said he was not obligated to tell him the specific allegations. Sucher then showed Cockrell a statement and asked him to read it and whether he had made the following statement:

> Did you make a statement to the other Team members that if they wanted to 'get fucked in the ass' everyday by the company here at work, they were fools and/or if they liked getting 'fucked in the ass' everyday by the company then do not complain about it?

Cockrell told Sucher that he gave his opinion the same way as everyone else in the break room. Sucher asked Cockrell if he wanted to rewrite his statement or to maintain his position. Cockrell said he would stand by his statement.

Sucher then told Cockrell that Respondent would proceed with the investigation and the supervisors left the room and returned about 20 minutes later. Department Manager Dovie Majors then told Cockrell that because he refused to answer the question posed by Sucher, she would recommend his termination to the "core group." The "core group" is composed of various department heads and other highly placed management personnel to whom all disciplinary actions must be presented for approval by the head of the department in which the particular employee is employed. Cockrell was then instructed to turn in his badge, stamps and tools and was escorted from the plant.

Sucher telephoned Cockrell about 11:30 a.m. on the same day and told him that the core group had decided not to terminate him but to issue him a level III disciplinary action. Sucher explained at the hearing and the record shows that there are four steps in Respondent's disciplinary procedure. Steps I and II are the less serious steps. Step III is the most serious step prior to Step IV which is the discharge step. Once an employee has been issued a level III warning he is subject to discharge for any subsequent offense. Sucher testified that Respondent does not follow progressive discipline other than for attendance but rather that the issuance of a Step I, II, III, or IV level depends on the severity of the offense. Thus, an employee without any prior discipline can be issued a level I, II, III, or IV discipline depending on the serious nature of the offense. Sucher told Cockrell he was being issued a level III disciplinary action for the use of abusive and profane language. Cockrell was required to draft a written letter of commitment and answer a series of written questions which were submitted to Majors who approved them. He was then permitted to go home for the rest of the day and returned to work on July 13 which was his next scheduled work day.

It is clear from the record in this case that Respondent based its decision to issue the Level III warning to Cockrell on the uncorroborated testimony of Elwood Parker who also testified at the hearing. On June 24, Robert Hamlin, Crew Leader for Area 4, Final Assembly, received a complaint about Cockrell from employee Elwood Parker as they were leaving the plant at the end of the shift. Hamlin called this to the attention of Dovie Majors as she was leaving the plant. She then asked Parker to return to the office and took him to the Human Resources Department to speak with Steve Sucher, Human Resources Development Leader. Parker gave Respondent a statement that day that while Cockrell was talking with other employees in the break room concerning a union, Cockrell became loud and angry, stood up, kicked a chair and told fellow employees that if they "liked getting fucked in the ass everyday here at work we were fools." Parker further testified that Cockrell remained agitated and left and re-entered the room in an agitated state on three occasions and that

Cockrell seemed to be out of control and that he felt threatened by Cockrell's conduct. At the trial in this case, Cockrell admitted to telling the employees in the break room that if they "don't like the idea of coming to work and letting the company fuck you in the ass everyday, don't complain about it." During the investigation interview, Cockrell told Sucher that he did not recall leaving the room and returning on more than one occasion.

As part of its investigation, Respondent's management took statements from several of the other employees who had been in the break room during the June 24 discussion about unions. In his statement, Curtis Jennings related that he overheard a debate about the pros and cons of union, that the conversation got a little loud causing one team member to leave and come back after it was over. "Elwood and Jeff were talking mostly and I guess it got to Jeff. I remember Jeff saying that if we liked getting fucked in the ass everyday by the Company then do not complain about it." Jeff got a little vocal during the conversation and also used profanity. Finally, break was over and I left because I do not see a need for a union in our plant so I am not getting involved in all the union hype. Employee Robbie Rutland states in his statement that he knew that Jeff, Steve, and Elwood were talking about something but he wanted to rest his eyes and put his earplugs in and did not know what they were talking about. He stated that he did hear foul language but it did not offend him. He did not hear "anybody being cussed out." "I would not remember what curse words were said." In his statement, employee Michael Williams said "Jeff was talking about what the Union can do for us as a company and we didn't agree." He stated that Jeff said the Company wasn't doing the right thing so he got a little hot about the things we didn't agree on. Then he called us stupid. He was going on so Williams "told him he needs to quit if it's that bad." In her statement, Patricia Butler said as follows:

> Everyone was sitting around the table and the conversation about the Union came up. Everyone was voicing their opinion about the Union. Jeff was saying what the union can do for us. Elwood and Jeff was back and forth talking about the pros and cons. If you didn't agree to things, Jeff would get his point across. Profanity was used by people in the break room but it wasn't directed to a particular person. I didn't hear any threatening behavior. They were trying to make their point. After break, Jeff and I went to the palletizer.

In his statement, employee Steve Lorick said that a discussion took place about a pamphlet that was handed out. "Nothing to my knowledge was said that made me feel uncomfortable by anyone" and "I still remember bits and pieces and at no time did I think that this discussion was any different than many other topics that we talk about" and "I was not in the break room when any (heated or otherwise) topic took place." Employee William Joyce, in his statement, said as follows:

> On 6/24/04 the team members indicated on the list described by Debbie Reed were all in discussion about the Union during our break in Area 400. The total discussion centered around the pros and cons of the Union. Some minor profanity was used mostly by all participants but nothing I would think to be offensive toward anyone in the group or at least no one in the group displayed any signs of discomfort. Actually, I didn't feel any different at the end of the discussion than I would have for any other topic we discuss as a group. In my opinion this discussion ended with no harm done to anyone.
>
> /s/ Will Joyce

General Counsel contends, and I find, that as a result of its review of the employee statements, Respondent was well aware that Cockrell had not engaged in any misconduct. Furthermore, Sucher admitted at the hearing that there was no evidence of physical attack or threat of physical attack by Cockrell and that Cockrell had not lunged at Parker nor made any type of verbal threat toward Parker.

It is undisputed that Respondent did not investigate and follow up on profanity used by other employees in the June 24 discussion in the break room. Its focus was only on Cockrell, the acknowledged leading union adherent. It is also clear that Respondent had issued milder level I and level II warnings to other employees for engaging in verbal altercations where profanity was used rather than issue a level III warning as it did in the case of Cockrell, thus, providing a showing of disparate treatment against Cockrell by Respondent.

I find that Respondent violated Section 8(a)(1) and (3) of the Act by its issuance of the level III discipline to Cockrell. I find that Sucher's intense questioning of Cockrell by Sucher was unlawful interrogation designed to take disciplinary action against Cockrell and was thus violative of Section 8(a)(1) of the Act. I find that the threat issued by Dovie Majors was violative of Section 8(a)(1) of the Act. *Greenfield Die and Manufacturing Corporation***,** 327 NLRB 237 (1998); *Consolidated Diesel Co.,* 332 NLRB 1019 (2000); *Rossmore House*, 269 NLRB 1176 (1984); *Emery Worldwide*, 309 NLRB 185, 186, 187 (1992). With respect to the issuance of the level III discipline to Cockrell, Sucher testified that the use of profanity alone would probably lead to a level I discipline and that level III discipline would require more provocative "in your face" type of conduct and that a level IV or discharge would require physical violence or a threat of physical violence. It is undisputed that Cockrell's participation in the break room discussion did not rise to the level of either a level III or level IV discipline even if it had occurred as stated by Parker. I find that Parker's contentions with respect to Cockrell's conduct at the break room discussion were not corroborated by any of the other employees in attendance. It is also noteworthy that Parker himself did not contend that Cockrell had directed any profanity directly to him or in any manner got into his face or threaten or engage in any violence against Parker or anyone else. With respect to another prior discussion between employee Wright and Cockrell in the exercise room at which Cockrell became agitated during a discussion about the Union which discussion had been initiated by Cockrell, I find it has no relevance in this case and is not determinative of any issue in this case.

E. The Discharge of Cockrell

Having been returned to work by Respondent on July 13, Cockrell worked that date until the morning of July 15 when he left work at the completion of his shift and exited the parking lot. Elwood Parker and employee Steven Hendren with whom Parker carpooled were walking to Hendren's vehicle on the edge of the two-way driving lane in the parking lot which has a 15 miles per hour speed limit. Parker and Hendren testified that as they walked they were suddenly confronted with a loud sound of a turbo charger as Cockrell's blue Dodge Neon came dangerously close to them.

Employee Steven Hendren testified that he was involved in an incident in the parking lot on July 15 as follows:

> As me and Elwood (Parker) were leaving the parking lot and going to my vehicle, just got off of night shift, about half way across the parking lot, let's see, I was on the outside and he (Parker) was on the inside, all of a sudden there was a turbo kick in on a car. The speed limit is 15 (miles per hour) so within about a matter of seconds he was doing within 50 miles an hour plus. He came within maybe two to three feet.

Hendren testified he knew at the time that the person driving the car was Jeff Cockrell as he "was the only one that just bought a brand new turbo Neon '04 Dodge." He testified he actually saw Cockrell at that time as "when the turbo kicked in, when I turned my head, he was pretty much right there, the window was down." He testified further "Well hearing the sound, I knew what it was; but seeing the vehicle and that close, it – it got me a little angry." His normal shift at the time was 6:45 in the evenings to 7:15 in the mornings. The incident occurred in the morning at the end of his shift. Chad Head was further down the road from where he and Parker were at the time of the incident.

Employee Chad Head testified that he had been waiting for his sister in his truck and "I had my radio on in my truck and my windows up and everything and I heard a car speeding up, revving up, accelerating and I turned around to look and see what it was. I was on the very front row and it was coming behind my truck … and I seen the car coming and I noticed it was a Neon … and I saw that it was Jeff Cockrell, and he sped on by, and stopped at the end real quickly and went out of the parking lot and at the time, I didn't think anything of it, except that he was going mighty fast in the parking lot." He then saw Parker and Hendren walking up to Hendren's truck. Parker asked if he had seen anyone in the parking lot and he told them he had seen Cockrell. Head testified further that he had not seen the incident himself. Head acknowledged that in a statement given to Respondent's representatives later that day (July 15) he had estimated the vehicle "was going maybe 25 to 30 miles an hour or faster, more than you should in a parking lot."

Elwood Parker testified concerning the parking lot incident that he and Hendren were walking along the front of the parked cars to their vehicle as they carpool together. "… all of a sudden I (Parker) just feel and hear a car … just out of nowhere, and I'm jerking back and kind of almost grabbing Steven and moving him and it was Jeff (Cockrell) flying by. … I didn't even hear him coming. All I did was felt the car on my chest. I felt the car and heard it and I just had seconds to react … it scared me, shocked me and made me angry all at once because, you know, he was very close, two to three feet, and he just stayed and he stayed – his car was at full throttle all the way. Didn't slow down, didn't stop, nothing." "I saw him (Cockrell) … looking back in his rearview mirror. … he was already down at the end of the parking lot, slamming on his brakes." Parker placed the speed of Cockrell's vehicle to have been traveling 45 to 50 miles an hour. In an earlier statement to Respondent (G.C. Exh. 14) he stated that Cockrell reached speeds of 30 to 35 miles per hour.

Cockrell was questioned concerning the incident. He told them that he had left the parking lot as he normally does. At the hearing, Cockrell testified that he told Debra Reed:

> I told her that I went to the front of the building, I clocked out, walked out the front doors, went across the circle in the center, walked to the left to where my car is at the far end of the building, and got in it, cranked it up and took a left hand turn and went straight down along the sidewalks, between the cars and the sidewalk, and headed all the way down and stopped, you know,

> to get into the traffic to get on the main drag to go out the front gate. Just the same way I've done for the last five years.

Cockrell also testified that at the meeting of July 15, he was told by Reed that some employees had stated that he had "exceeded the speed limit an excessive amount that morning" and that he denied this. Cockrell was discharged on July 19 for the parking lot incident. The termination letter also refers to the Level III warning.

Cockrell testified that on the evening of July 15 shortly after his arrival at work, he met employee Robert Frietas who told him that Brad Carter, a member of the antiunion committee was telling department employees that he (Cockrell) had intentionally attempted to run over an employee in the parking lot that morning. Cockrell immediately contacted his supervisor, Bob Hamlin, and asked to speak to him about this matter. Hamlin suggested they meet in the warehouse which is quieter. Cockrell told Hamlin of the rumor and asked Hamlin about it. Cockrell also told Hamlin that he had not tried to run over anyone. Hamlin told Cockrell this was out of character for him. Cockrell told Hamlin that he felt this was something the Company was doing to get him out of the plant and that he (Cockrell) wasn't stupid. According to Cockrell, Hamlin then said "I know you're not stupid; but … is this really worth it?" Hamlin also said, "think about your newborn baby." Cockrell told him that when he started the campaign, he knew there would be risks but that once you start, you can't stop it. At that point, Hamlin received a telephone call from Reed and then told Cockrell that he was to escort him "up front." Hamlin did not deny having made these comments to Cockrell and testified that it was something he could possibly have said to an employee who already had a warning and was now involved in another matter. Hamlin also testified that he already had been contacted and advised that he would be asked to escort Cockrell to Human Resources to discuss the parking lot incident.

I find that Hamlin's question to Cockrell whether it was really worth it and his advice to Cockrell that he should think about his newborn baby were clearly references to Cockrell's union activities and were clearly unspecified threats of reprisal for his engagement in union activities. I find that Respondent thereby violated Section 8(a)(1) of the Act.

In *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982); approved in *NLRB v. Transportation Management Corp.*, 462 U.S. 393 (1983), the Board set forth its causation test for cases alleging violations of the Act that turn, as does the case herein, on employer motivation. First, the General Counsel must persuade the Board that antiunion sentiment was a substantial or motivating factor in the challenged employer conduct or decision. Once this is established, the burden then shifts to the employer to prove its affirmative defense that it would have taken the same action even if its employee had not engaged in protected concerted activity. See *Manno Electric, Inc.*, 321 NLRB 278, fn. 12 (1996). Counsel for the General Counsel must demonstrate by a preponderance of the evidence (1) that the employee was engaged in protected concerted activity; (2) that the employer was aware of the activity; (3) that the activity or the workers' union affiliation was a substantial or motivating reason for the employer's action, and (4) there was a casual connection between the employer's animus and its discharge decision.

Applying the foregoing test to the facts in this case, I find that Cockrell was a leading union advocate, that the employer was aware of his union activity and that the activity was a substantial motivating factor in Respondent's decision to issue the Level III warning to Cockrell and subsequently to discharge him following the parking lot incident as the

discharge was clearly based on not only the parking lot incident but also was based on the Level III warning as set out in Respondent's letter of discharge sent to Cockrell. I find that the Respondent's animus against the Union and its supporters has been established and that there was a casual connection between the Respondent's animus and its discharge decision. I thus find that the General Counsel has established a *prima facie* case of Section 8(a)(1) and (3) of the Act by the issuance of the Level III warning and the discharge of Cockrell.

Once a *prima facie* case of a violation has been found, it is incumbent on the employer to demonstrate by the preponderance of the evidence that the adverse action such as the Level III warning and discharge in this case would have been taken even in the absence of the unlawful motivation, I find in this case that Respondent has met this burden with respect to the discharge of Cockrell and has established that he would have been discharged for his conduct in the parking lot incident. I find the General Counsel has failed to rebut Respondent's evidence that it would have discharged Cockrell even in the absence of the unlawful motivation.

I reach this conclusion by the weight of the credible evidence that Cockrell drove his automobile in a reckless manner designed to frighten Elwood Parker with whom he had had a disagreement in the break room discussion and for whom he most certainly blamed for the Level III warning issued to him by Respondent. In so doing, Cockrell put both Parker's and Hendren's life and safety in jeopardy. I find he was, as testified to by Parker and Hendren, traveling at least 30 miles per hour or higher in the parking lot which has a 15 mile-per-hour speed limit and I find that he was substantially over the mid point of the 25 foot driveway and drove his automobile so that he was within two to five feet of these employees as he passed by them with his turbo charged to add to the fear of these individuals by subjecting them to the startling sound as well.

I find, in agreement with Respondent in this case, that this conduct in the parking lot by Cockrell could not be ignored and that Respondent was fully justified in discharging Cockrell for this conduct. As noted in Respondent's brief, it is a necessity for businesses to respond promptly to incidents of workplace violence as emphasized by Board Member Liebman in her concurring opinion in *Pactiv Corp. d/b/a Tenneco Packaging, Inc.*, 337 NLRB 898 (2002) at 899 where she stated:

> Employers justifiably are more concerned today than ever about workplace violence and they must remain free to quickly address genuine threats. The Board's sound policy is not to second-guess well-intended employer efforts to provide a safe workplace.

In *Clark Equip. Co.*, 250 NLRB 1333 (1980), the administrative law judge concluded that an employee who openly supported a union, while operating his vehicle in the employees' parking lot had driven "hazardously close to striking" another employee with whom he had a dispute. *Id.* at 1338. He held that the employee's conduct was justifiable grounds for discharge. Although the Respondent in this case may have welcomed the opportunity to rid itself of a leading union adherent as a response to the Union's organizing campaign and its overall goal in shutting down the Union campaign, it was Cockrell who provided Respondent a lawful opportunity to do so by his actions in engaging in the dangerous operation of his motor vehicle putting Parker's and Hendren's life and personal safety at risk. According to the unrebutted testimony of Union Organizer Samuel Penn, Sr., which I credit, the discharge of Cockrell had the effect of shutting the Union campaign down

as employees no longer attended Union meetings.

Conclusions of Law

1. The Respondent is an employer within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. The Respondent violated Section 8(a)(1) of the Act by:

(a) Creating among its employees the impression that their union activities were under surveillance.

(b) Unlawfully interrogating its employee Jeffrey Cockrell regarding his union activities.

(c) Threatening Jeffrey Cockrell with discharge because of his engagement in union activities.

(d) Threatening employee Jeffrey Cockrell with unspecified reprisals because of his engagement in protected concerted activities.

4. The Respondent violated Section 8(a)(1) and (3) of the Act by its issuance of a Level III written disciplinary warning to employee Jeffrey Cockrell because of his participation in protected concerted activities.

5. Respondent did not violate Section 8(a)(1) and (3) of the Act by its discharge of employee Jeffrey Cockrell.

6. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

The Remedy

Having found that the Respondent has engaged in violations of the Act, it will be recommended that Respondent cease and desist therefrom and take certain affirmative actions to effectuate the purposes and policies of the Act and post the appropriate notice.

It is recommended that Respondent remove the Level III written warning from the employment records of Jeffrey Cockrell and advise him in writing of this and that such warning will not be used against him in any manner in the future.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended:[5]

[5] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec.

Continued

ORDER

The Respondent, Bridgestone Firestone South Carolina, its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Unlawfully interrogating its employees regarding their union sympathies and activities.

(b) Unlawfully threatening its employees with discharge because of their engagement in union and protected concerted activities.

(c) Unlawfully creating the impression of surveillance of its employees' union activities.

(d) Unlawfully threatening its employees with unspecified reprisals because of their engagement in union and protected concerted activities.

(e) Unlawfully issuing its employees disciplinary warnings because of their engagement in union and protected concerted activities.

(f) Violating the Act in any like or related manner.

2. Take the following affirmative action necessary to effectuate the policies of the Act:

(a) Rescind the Level III warning issued to Jeffrey Cockrell and remove any reference to this warning from its files and within 3 days advise Cockrell that this has been done and that said warning will not be used against him in any manner.

(b) Post at its Graniteville, South Carolina, facility copies of the notice marked "Appendix."[6] Copies of the notice, on forms provided by the Regional Director for Region 11, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any

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102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[6] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

time since June 2, 2004

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

IT IS FURTHER ORDERED that the complaint is dismissed insofar as any violations are not specifically found.

Dated, Washington, D.C.

_____

Lawrence W. Cullen
Administrative Law Judge

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this Notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities

WE WILL NOT create among our employees the impression that their union activities are under surveillance.

WE WILL NOT unlawfully interrogate our employees regarding their union activities.

WE WILL NOT threaten our employees with discharge because of their engagement in union activities.

WE WILL NOT threaten our employees with unspecified reprisals because of their engagement in protected concerted activities.

WE WILL NOT issue disciplinary warnings to our employees because of their engagement in protected concerted activities.

WE WILL NOT violate the National Labor Relations Act in any like or related manner.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful Level III warning issued to Jeffrey Cockrell and **WE WILL** notify him in writing that this warning will not be used against him in any manner in the future.

BRIDGESTONE FIRESTONE SOUTH CAROLINA

(Employer)

Dated _____ **By** _____

(Representative) **(Title)**

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any

agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

4035 University Parkway, Republic Square, Suite 200
Winston-Salem, North Carolina 27106-3323
Hours: 8 a.m. to 4:30 p.m.
336-631-5201.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, 336-631-5244.